



DEFEND CONTROL JOBS
AN INJURY TO ONE IS AN INJURY TO ALL

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To Brigade Secretaries

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RE-EMPLOYMENT AND ABATEMENT IN THE FIRE SERVICE

Dear Brother/ Sister

Over recent weeks my office has been contacted by several officials requesting clarification on issues surrounding pension abatement. Officials may be aware of an FBU circular issued by National Officer, Paul Woolstenholmes (2006HOC0492PW) in August 2006, which gave an overview of the abatement issue as it affected people at that time.

The purpose of this circular is to reaffirm and update the issues addressed in the 2006 circular and inform officials of the work that the FBU is undertaking to satisfy outstanding issues on this subject.

The possibility of abatement is dealt with in Rule K4 of the Firefighters Pension Scheme 1992. The Commentary explains how the Department for Communities and Local Government (CLG) expects abatement to work in the following terms:

- “1 This Rule covers circumstances where, normally, a firefighter is in receipt of a pension other than an ill-health pension.*
- 2. A commuted lump sum payable on retirement is not affected by the subsequent withdrawal of a pension under this Rule.*
- 3. The Home Departments recommend that, in accordance with general public service pensions policy, fire authorities should, on a pensioner’s resuming service as a regular firefighter, withdraw so much of the fire pension that the total of pension and pay on rejoining does not exceed the rate of pay before retirement.*

In most cases, where current pay at least equals previous pay, the firefighter’s pension is likely to be wholly withdrawn during the second period of service.

- 4. When you retire from your new employment, your pension position will be as follows -*
 - your original pension will come back into payment...”*

In essence this means that if an individual earned £25k in their firefighter role, covered by the Grey Book, and then retired and is re-employed in a firefighter role, covered by the Grey Book, earning £25K all the annual pension payment should be abated until the individual retires for a second time. This **does not** however prevent an individual from drawing their full entitlement to any commuted lump sum award available.

This is how abatement is being applied when dealing with retirees from the Firefighters' Pension Scheme. Currently, there is no application of abatement when an individual is re-employed in a public sector role, not covered by the Grey Book

The way abatement is being applied has caused some concern and anger amongst FBU members, who feel that they are being discriminated against. A year ago the FBU took Queen's Counsel advice to explore the possibility of a legal challenge on the basis of age discrimination. Unfortunately the view was that any such challenge was unlikely to succeed.

More recently, at the last meeting of the Firefighters' Pension Committee meeting, held on 19th November 2008, CLG outlined changes that they want to make to the rules on abatement:

- As outlined previously, abatement currently applies only if the member is re-employed as a regular firefighter. CLG, prompted by the Treasury, want to apply abatement if a member is re-employed in any public sector job meaning that the pension of a member, who is re-employed in a Green Book job, would be subject to abatement if this proposal is pursued.
- CLG proposes however that abatement should only apply until a member's 55th birthday. If a member retires at age 50 and is re-employed, their pension will be abated for five years but from age 55 they will be paid their ordinary pay plus their pension.
- The rule on abatement currently states that the FRA has discretion whether or not to abate a pension although guidance has been issued to the effect that abatement should normally be applied. CLG has informed us that this breaches current Treasury directions addressed to government departments, which states that abatement should be mandatory and not discretionary.

The chair of the FPC, Martin Hill, said that if there was a wish to apply for a relaxation of the abatement rules for the FPS then this issue would need to be raised with the Treasury.

FBU representatives at the meeting reiterated the union's opposition to the whole concept of abatement. This takes cognisance of Annual Conference 2007 Resolution 83, which demanded that the Executive Council should make efforts to have the abatement rule within the FPS, NFPS and the LGPS removed or amended to stop this practice. CLG and the Treasury are insistent on applying abatement on the ground that there is a cost to the FPS, and therefore the Treasury, if pensions are not abated.

FBU representatives also explained that, by the time a firefighter reaches the age at which he or she can retire, the scheme has already been funded to provide an immediate pension. If the retired member is re-employed to fill a vacancy that would arise then someone else would be, and there is no additional cost arising from the re-employment of a retired firefighter rather than someone else. Officials should note, however, that if the Treasury does not get its way then they may be tempted to return to the proposal made when the FPS was last revised. Officials will remember that this previous Treasury proposal would have meant that the retirement age for all members would have been 55, even if they have 25 years' service.

At the same meeting the Association of Principle Fire Officers (APFO) representative also raised a concern that to apply the abatement rules to roles other than those covered by Grey Book conditions would reduce the FRA's ability to attract the best qualified candidates, but raised no issue to the on-going abatement rules being applied when firefighters are re-employed in their previous role.

For clarity, officials should recognise the following points that should be considered when any abatement issues are being discussed.

- The FRA has total discretion on any decision to re-employ but, whilst they have discretion on the decision to apply abatement, if they follow the current guidance then they should apply it.

- If a FRA decides that they are going to allow re-employment they must have a policy which covers this process. This policy, like other policies, must be subjected to an equality impact assessment.
- An individual must retire before they are eligible for a pension award. To satisfy the rules of the pension schemes this may be a very short period of time but many FRAs insist upon a longer period in order that all employment rights, which require a minimum period of continuous employment, are removed,
- If an individual is re-employed in their previous role they will not be eligible to join the FPS but will be entitled to join the NFPS and to be able to build up a pension in this scheme,
- The earliest age an individual can be eligible for a pension award, other than on grounds of ill health, is 55 (unless they have 25 years of service in which case it is age 50),
- Following the introduction of Employment Equality (Age) Regulations, in October 2006, an individual can continue at work and should not face discrimination based purely on age. The rules of the FPS and NFPS have been amended to remove the compulsory retirement age.

Many FRAs have however decided not to re employ firefighters as previously described, some for the reason of working towards achieving a more diverse workforce, while others have agreed to re-employ retired pension scheme members subject to them applying in line with all other applicants from the community.

Officials should also be aware that some FRAs are allowing flexible re-employment of retired pension scheme members on a job sharing contract. This could allow partial abatement of the pension to apply (because the member's part-time salary plus their pension does not exceed their previous whole-time salary).

FBU officials must recognise all the relevant factors when they are involved in discussions on the issue of re-employment and abatement and should take cognisance of all the points raised in this circular.

Yours in Unity,

A handwritten signature in black ink, appearing to read 'SEAN STARBUCK', with a stylized flourish at the end.

**SEAN STARBUCK
NATIONAL OFFICER**

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